

37 Am. Jur. 2d Fraud and Deceit § 71

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Fraud and Deceit

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IV. False Representations

B. Necessity that Representation Be of Fact; Opinions

3. Qualifications of, and Exceptions to, Rule Holding Opinions Nonactionable

a. In General

§ 71. Generally

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West's Key Number Digest

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There are many qualifications and modifications of the rule that actionable fraud cannot be based upon the mere expression of an opinion.¹ Frequently, a false assertion of even an opinion will amount to a fraud where under the circumstances the other party has a right to rely upon what is stated or represented.² Thus, an expression of opinion may amount to fraud where it is a mere contrivance of fraud, where the person to whom it was expressed has justly relied upon it and been misled,³ or where it is coupled with other circumstances,⁴ such as active fraud or concealment.⁵ Statements of opinion may be actionable fraud where the party making the representation does so with the intent to prevent the party relying thereon from making an independent investigation of the facts.⁶

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Footnotes

¹ [Rochester Bridge Co. v. McNeill](#), 188 Ind. 432, 122 N.E. 662 (1919); [Madison Trust Co. v. Helleckson](#), 216 Wis. 443, 257 N.W. 691, 96 A.L.R. 992 (1934).

² [Bell v. Lamborn](#), 2 F.2d 205 (C.C.A. 4th Cir. 1924); [Bushey v. Coffman](#), 103 Kan. 209, 173 P. 341 (1918); [Murph v. Foxworth](#), 93 S.W.2d 817 (Tex. Civ. App. Galveston 1936).

³ [Amazon v. Davidson](#), 390 So. 2d 383 (Fla. 5th DCA 1980); [Rochester Bridge Co. v. McNeill](#), 188 Ind. 432, 122 N.E. 662 (1919); [Murph v. Foxworth](#), 93 S.W.2d 817 (Tex. Civ. App. Galveston 1936).

⁴ [Rochester Bridge Co. v. McNeill](#), 188 Ind. 432, 122 N.E. 662 (1919).

⁵ [Amazon v. Davidson](#), 390 So. 2d 383 (Fla. 5th DCA 1980); [Gray v. Richmond Bicycle Co.](#), 167 N.Y. 348, 60 N.E.

663 (1901).

⁶ [Baker v. United Services Auto. Ass'n](#), 661 So. 2d 128 (Fla. 1st DCA 1995).

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